

1                   **Remarks for the “Response to Final Office Action dated**  
2   **10/13/2006”**

3           Applicant respectfully requests entry of the following remarks and  
4 reconsideration of the subject application. The remarks should be entered under  
5 37 C.F.R. §1.116 as they place the application in better form for appeal, or for  
6 resolution on the merits.

7           Applicant respectfully requests reconsideration and allowance of all of the  
8 claims of the application. Claims 1-23 are presently pending. Claim amended  
9 herein is none. Claims withdrawn or cancelled herein are none. New claims added  
10 herein are none.

11  
12           **Formal Request for an Interview**

13           If the Office’s reply to this communication is anything other than allowance  
14 of all pending claims, then Applicant formally requests an interview with the  
15 Examiner of this patent application. Applicant asks the Examiner to call and/or  
16 email me—the undersigned attorney for the Applicant—so that I can best schedule  
17 a date and time for a telephone interview that is most convenient for you.

18           You might consider calling me between noon and 7pm (Eastern Standard  
19 Time) on weekdays—since I am on the west coast. If you don’t reach me when  
20 you call, then please leave and voicemail and send me an e-mail with an indication  
21 of a good day and time to call you back.

## Substantive Claim Rejections

### Claim Rejections under §§ 102 & 103

The Office rejects all of the pending claims under §102 and/or §103. For the reasons set forth below, the Office has not shown that cited references anticipate (under §102) the rejected claims. For the reasons set forth below, the Office has not shown made a *prima facie* case showing that the rejected claims are obvious (under §103). Accordingly, Applicant respectfully requests that the rejections be withdrawn and the case be passed along to issuance.

The Office's rejections are based upon the following references:

- **Feezell**, *Freezel et al.*, US Patent No. 6,253,189 (issued June 21, 2001); and/or
- **Roth**, *Roth et al.*, US Patent No. 6,285,987 (issued Sept. 4, 2001).

### Overview of the Application

The Application describes a technology for providing a common rating scale for services to facilitate the buying and selling of services via an on-line auction. In at least one implementation, the *common rating scale* provides a single and universal mechanism for valuing or rating a service (or good), which is otherwise difficult to value or rate because of a multitude of different or variable factors affecting the value of a service (or good).

At least one described implementation is an on-line auction (such as an Internet auction), where services are the subject of such auction. More specifically, the services have a highly variable valuation (e.g., a "time-sensitive" value). In the described implementation a common rating scale is provided so that

1 the value (and, in particular, the time-sensitive nature of the value) of such  
2 services may be specified. Thus, this gives a common unit of measurement for  
3 perceived valuation of a service.

#### 4 5 Cited References

6 The Office cites **Feezell** as its primary references in its anticipation-based  
7 rejection and in its obviousness rejection. The Office cites **Roth** as its secondary  
8 reference in its obviousness-based rejections.

#### 9 10 Feezell

11 **Feezell** describes a technology for completing advertising time slot  
12 transactions. A time-slot exchange server receives an offer to sell a time slot  
13 along with time slot information relevant to making a buying decision with respect  
14 to the time slot. The time-slot exchange server makes available time slot offer and  
15 marketing and valuation data to assist a buyer to identify and properly value a time  
16 slot that meets the buyer's requirements. The time-slot exchange server receives  
17 time slot bids and transfers the ownership of a time slot from a seller to a buyer  
18 when a bid meets or exceeds the terms of the time slot's offer to sell.

19 The time-slot exchange server also ensures that a broadcaster has a correct  
20 copy of an advertisement to be shown in a time slot, and sends verification data to  
21 an advertiser indicating whether, when and how an advertisement intended to be  
22 shown in a time slot was actually seen. The time-slot exchange server also settles  
23 accounts in a time slot trade, debiting an account of a seller and crediting an  
24 account of a buyer in accordance with the terms of the trade.

Roth

**Roth** describes a technology for providing advertisements from a central server to viewers who access web sites. The central server stores both advertisements which are to be displayed and an information data base. The data base includes information about viewers, information about the characteristics of particular web sites and other information relevant to which advertisements should be displayed for particular viewers.

Proposed bids submitted by different advertisers are evaluated in real time in order to determine which particular advertisement will be displayed to a viewer. Each proposed bid can specify a price or amount that the advertiser is willing to pay for the opportunity to display an advertisement (a) to a viewer who has a particular set of characteristics and (b) on a web site and web page that meets a particular set of criteria.

The system includes (a) a web server system which has data bases stored therein, (b) bidding agents which compare the characteristics of view-ops to the specifications in proposed bids and which submit bids as appropriate, and (c) bid selection logic which decides which bid to accept for each particular view-op.

## **Anticipation Rejections**

### **Based upon Feezell**

The Office rejects claims 1, 2 and 4-23 (i.e., all pending claims except claim 3) under USC § 102(e) as being anticipated by **Feezell**. Applicant

1 respectfully traverses the rejections of these claims. Based on the reasons given  
2 below, Applicant asks the Office to withdraw its rejection of these claims.

3  
4 Independent Claim 1

5 On pages 4-5 of the Action, the Office indicates the following with regard  
6 to this claim:

7 Regarding to claim 1, Feezell discloses a method for facilitating the on-line  
8 auction of one or more services, the method comprising:

9 obtaining a service item for auction (column 5, lines 1-10, the Time Slot  
10 Exchange Server (TSES) 406 receives the time slot offers from sellers and stores in the  
11 database 405);

12 providing a rating for the service item based upon a common rating scale  
13 (column 7, lines 35-45, assigning weights to the submitted requirements, e.g. the age is  
14 assigned a weight of 10, the income is assigned a weight of 20);

15 managing an on-line auction for the service item, wherein the managing  
16 comprises: receiving on-line bids for the service item in terms of rating units  
17 rather than monetary units (column 10, lines 5-25, receiving a non-specific bid from the  
18 buyer, e.g. a bid seeks a time slot with a viewer demographic focusing on households  
19 with annual incomes between \$20,000 and \$30,000, the bidder specifies a 10%  
20 tolerance in the household income requirement); closing the on-line auction for the  
21 service item; indicating one or more winning bids and one or more winning bidders  
22 (column 8, lines 25-27, a seller can accept a bid effectuate a transaction by selecting an  
23 accept button next to each bid).

1 Applicant submits that this anticipation rejection is not valid because no  
2 single reference (namely **Feezell**) discloses each and every element of this claim<sup>1</sup>.

3  
4 “providing a rating for the service item based upon a common rating scale.”

5 Applicant submits that **Feezell** does not disclose, for example, “providing a  
6 rating for the service item based upon a common rating scale [emphasis added].”

7 In its response to the previous Action, Applicant noted that the “rating  
8 system” disclosed by **Feezell** was not “a common rating scale” that rated a  
9 “service item.” Rather, **Feezell** disclosed a system where a buyer assigned  
10 “weights” to various submitted requirements (e.g., age, income, or other  
11 advertising demographics) for an advertising time slot.  
12  
13  
14  
15

16  
17  
18  
19  
20  
21  
22  
23  
24  
25 

---

<sup>1</sup> “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

1 In the Office's Action (p. 2), the Office replied to the traversal of this  
2 rejection in this manner:

3 In response to the applicant's arguments that Feezell does not disclose  
4 "providing a rating for the service item based upon a common rating scale", examiner  
5 submits that see Feezell, column 7, lines 35-45, the buyer assign weights to the  
6 submitted requirements, e.g. the age is assigned a weight of 10, the income is assigned  
7 a weight of 20, the TSES use weight information to prioritize *time slots that meet*  
8 *some or all of the submitted criteria*, and displaying to the buyer time slots raked  
9 from most suitable to less suitable based upon the need specified by the buyer in terms  
10 of weighted requirements, thus the weighted criteria submitted by the user are time  
11 slots' criteria or the time slot (the service item) is rating according to the time slots'  
12 criteria. Moreover, Feezell also discloses rating the time slots according to audience  
13 ratings, quality ratings (see column 9, lines 1-22). Therefore, Feezell does disclose  
14 "providing a rating for the service item based upon a common rating scale."  
15

16 The Office notes above that Feezell's TSES (Time Slot Exchange Server)  
17 uses "weight information" to prioritize time slots that meet some or all of the  
18 submitted criteria. Applicant agrees with that assessment of Feezell. However,  
19 the term "weight information" used by the Office should be written as "weights."  
20 So written, the assessment of Feezell disclosure on this point should be read as the  
21 TSES using "weights" to prioritize time slots...

22 Since Feezell uses "weights" to make its prioritization, it does not use "a  
23 common rating scale" [emphasis added]. Use of multiple weights (as Feezell  
24 uses) may qualify as use of at least one rating scale, but that is not the claim  
25 language. Instead, the claim recites the use of at least one common rating scale.

1 Applicant respectfully submits that the Office has not identified which of the  
2 multitude of "weights" qualifies as a common rating scale.

3 Furthermore, Applicant submits that the multitude of "weights" is measure  
4 of criteria used to prioritize the time slots. The "weights" are not a measure of  
5 value or ranking of the time slots themselves. Rather, the "weights" are a measure  
6 of the value or ranking of the criteria to be used in selecting a time slot.  
7 Consequently, **Feezell** does not disclose "providing a rating for the service item",  
8 where the time slots in **Feezell** are considered equivalently (for the sake of  
9 argument only) to the claimed service item.

10 Applicant submits that **Feezell** does not anticipate this claim because  
11 **Feezell** does not disclose "providing a rating for the service item based upon a  
12 common rating scale."

13  
14 "receiving on-line bids for the service item in terms of rating units rather than  
15 monetary units."

16 Furthermore, Applicant respectfully submits that **Feezell** does not disclose,  
17 for example, "receiving on-line bids for the service item in terms of rating units  
18 rather than monetary units."  
19  
20  
21  
22  
23  
24  
25



1 In its response to the previous Action, Applicant noted the cited portion of  
2 **Feezell** that discusses a buyer's "non-specific bids." Applicant submits that the  
3 buyer's "non-specific bids" are not "in terms of rating units rather than monetary  
4 units" (as is recited in the claims).

5 In the Office's Action (pp. 2-3), the Office replied to the traversal of this  
6 rejection in this manner:

7 In response to the applicant's arguments that Feezell does not disclose  
8 "receiving on-line bids for the service item in terms of rating units rather than monetary  
9 units", examiner submits that see Feezell, column 10, lines 5-25, the buyer can submits  
10 "a non-specific bid" is based upon criteria of a time slot, e.g. a bid seeks a time slot with  
11 a viewer demographic focusing on households with annual incomes between \$20,00  
12 and \$30,000, thus the non-specific bid is based upon criteria of a time slot, not  
13 monetary unit. Therefore, Feezell does disclose "receiving on-line bids for the service  
14 item in terms of rating units rather than monetary units."

15  
16 Applicant respectfully submits that Feezell's bid is explicitly defined as  
17 being in terms of monetary units. See col. 9, lines 51-55, which is reproduced  
18 below for the reader's convenience:

19 A bid is received as a message at the TSES, and includes  
20 a bidder identifier, the identifier of the time slot upon which  
21 the bid is made, and the terms of the bid (e.g., price, accept  
22 offered price, etc.) When the bid message is received by the  
23 TSES, the TSES establishes and stores a record of the bid, 55

24 So, as can be seen above, **Feezell** defines a bid as including "price" and  
25 "offered price." According to dictionary.com, the first proffered definition of  
"price" is "the sum or amount of money or its equivalent for which anything is

1 bought, sold, or offered for sale.” Applicant submits that those of ordinary skill  
2 will understand “price” to be in terms of monetary units.

3 Applicant further submits that the “non-specific” bids relied on by the  
4 Office still retains the “price” as part of the fundamental nature of **Feezell’s** bid.  
5 The difference between a “specific” bid and a “non-specific bid” is whether the  
6 bid is for a particular time slot or not. (See **Feezell** col. 9, line 60 through col. 10,  
7 lines 25.)

8 Therefore, by **Feezell’s** own admission (based upon its definition of a  
9 “bid”), **Feezell’s** bid is in terms of monetary units. This directly contrasts with the  
10 claim language that recites that the bid is “in terms of rating units rather than  
11 monetary units.”

12 Consequently, **Feezell** does not disclose all of the claimed elements and  
13 features of this claim. Accordingly, Applicant asks the Office to withdraw its  
14 rejection of this claim.

15  
16 *Dependent Claims 2-10*

17 These claims ultimately depend upon independent claim 1. As discussed  
18 above, claim 1 is allowable. It is axiomatic that any dependent claim which  
19 depends from an allowable base claim is also allowable. Additionally, some or all  
20 of these claims may also be allowable reasons that are independent to the reasons  
21 for the allowability of their base claim.  
22  
23  
24  
25

Independent Claim 11

On page 6 of the Action, the Office indicates the following with regard to this claim:

Regarding to claim 11, Feezell further discloses an on-line marketplace for auctioning services, the marketplace comprising:

a service auction-block computing system configured to obtain a service item for auction (figure 1, Time Slot Exchange Server 406);

a services rating computing system configured to provide a rating for the service item for auction based upon a common rating scale (figure 1, Independent Ratings Agency Server);

an auctioneer computing system configured to manage an on-line auction for the service item (figure 1, Time Slot Exchange Server 406).

Applicant submits that this anticipation rejection is not valid because no single reference (namely **Feezell**) discloses each and every element of this claim.

Applicant submits that **Feezell** does not anticipate this claim because **Feezell** does not disclose, for example, “a services rating computing system configured to provide a rating for the service item for auction based upon a common rating scale.” The Office cites the “Independent Ratings Agency Server”—which is numbered 407 in Fig. 1—as disclosing this.

Applicant is unclear as to what the “Independent Ratings Agency Server” of **Feezell** discloses because that term and the 407 reference number are never mentioned or described in the text of **Feezell**. So, the Applicant asks the Office to please clarify—with particularity—what it understands **Feezell** to disclose with

1 regard to the "Independent Ratings Agency Server" and where exactly that  
2 disclosure is located in the text.

3 In its review of **Feezell**, it appears possible that the "Independent Ratings  
4 Agency Server" might correspond to the unnumbered "objective independent  
5 ratings agency" disclosed at col. 5, lines 43-48. That passage states the following:  
6 "For example, the program\_id can be correlated to a ratings data set provided by  
7 an objective independent ratings agency (IRA). A record in the IRA ratings data  
8 set correlated with a particular time slot can include critics' notes, audience ratings,  
9 content notes and viewership estimates for the program."

10 Applicant submits that this, without more, does not amount to a disclosure  
11 of a "common rating scale" being used to provide a "rating for the service item"  
12 (as is recited in the claims).

13  
14 "...a rating for the service item for auction based upon a common rating scale."

15 Applicant submits that **Feezell** does not disclose, for example, "...a rating  
16 for the service item for auction based upon a common rating scale [emphasis  
17 added]."

18 Applicant submits that the "rating system" disclosed by **Feezell** was not "a  
19 common rating scale" rating a "service item." Rather, **Feezell** disclosed a system  
20 where a buyer assigned "weights" to various submitted requirements (e.g., age,  
21 income, or other advertising demographics) for an advertising time slot.

22 As the Office notes (on p. 2, para. 3 of the Action), **Feezell's** TSES uses  
23 "weight information" to prioritize time slots that meet some or all of the submitted  
24 criteria. Applicant agrees with that assessment of **Feezell**. However, the term  
25

1 “weight information” used by the Office should be written as “weights.” So  
2 written, the assessment of **Feezell** disclosure on this point should be read as the  
3 TSES using “weights” to prioritize time slots...

4 Since **Feezell** uses “weights” to make its prioritization, it does not use “a  
5 common rating scale” [emphasis added]. Use of multiple weights (as **Feezell**  
6 uses) may qualify as use of at least one rating scale, but that is not the claim  
7 language. Instead, the claim recites the use of at least one common rating scale.  
8 Applicant respectfully submits that the Office has not identified which of the  
9 multitude of “weights” qualifies as a common rating scale.

10 Furthermore, Applicant submits that the multitude of “weights” is measure  
11 of criteria used to prioritize the time slots. The “weights” are not a measure of  
12 value or ranking of the time slots themselves. Rather, the “weights” are a measure  
13 of the value or ranking of the criteria to be used in selecting a time slot.  
14 Consequently, **Feezell** does not disclose “...a rating for the service item for  
15 auction”, where the time slots in **Feezell** are considered equivalently (for the sake  
16 of argument only) to the claimed service item.

17 Applicant submits that **Feezell** does not anticipate this claim because  
18 **Feezell** does not disclose “...a rating for the service item for auction based upon  
19 a common rating scale [emphasis added].”

20 Consequently, **Feezell** does not disclose all of the claimed elements and  
21 features of this claim. Accordingly, Applicant asks the Office to withdraw its  
22 rejection of this claim.  
23  
24  
25

Dependent Claims 12-17

These claims ultimately depend upon independent claim 11. As discussed above, claim 11 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable reasons that are independent to the reasons for the allowability of their base claim.

Claims 18-23

On page 5 of the Action, the Office indicates the following with regard to these claims:

Claim 18-23 are written in computer-readable medium that parallel the limitations found on claims 1, 6-10 above, therefore, are rejected by the same rationale.

If the Offices assertion is accurate, then these claims are allowable for the same reasons that claims 1, 6-10 are allowable. Accordingly, Applicant asks the Office to withdraw its rejection of these claims.

421 West Riverside, Suite 500  
Spokane, WA 99201  
P: 509.324-9256  
F: 509.323-8979  
www.lee-hayes.com

lee-hayes

## Obviousness Rejections

### Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)

Applicant disagrees with the Office's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a *prima facie* case have not been met.

### Based upon Feezell and Roth

The Office rejects claim 3 under USC § 103(a) as being unpatentable over **Feezell** in view of **Roth**. Applicant respectfully traverses the rejections of these claims. Applicant asks the Office to withdraw its rejection of these claims.

### Dependent Claim 3

These claims ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable reasons that are independent to the reasons for the allowability of their base claim.

421 West Riverside, Suite 500  
Spokane, WA 99201  
P: 509.324-9256  
F: 509.323-8979  
www.lee&hayes.com

lee & hayes

1 **Dependent Claims**

2 In addition to its own merits, each dependent claim is allowable for the  
3 same reasons that its base claim is allowable. Applicant submits that the Office  
4 withdraw the rejection of each dependent claim where its base claim is allowable.  
5

6 **Conclusion**

7 All pending claims are in condition for allowance. Applicant respectfully  
8 requests reconsideration and prompt issuance of the application. If any issues  
9 remain that prevent issuance of this application, the Office is urged to contact the  
10 undersigned attorney before issuing a subsequent Action.  
11

12  
13  
14 Dated: 12.13.06

By: 

Respectfully Submitted,

Kasey C. Christie  
Reg. No. 40559  
(509) 324-9256 x232  
[kasey@leehayes.com](mailto:kasey@leehayes.com)  
[www.leehayes.com](http://www.leehayes.com)

421 West Riverside, Suite 500  
Spokane, WA 99201  
P: 509.324-9256  
F: 509.323-8979  
[www.leehayes.com](http://www.leehayes.com)

lee & hayes